IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 8893 of 2013

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

M/S SOM DISTILLERY PVT. LTD. SEHATGANJ DIST.RAISEN

Appearance:

Shri Shiraj Qureshi - Govt. Advocate for the State.

Shri Vinod Kumar Bhardwaj - Senior Advocate with Shri Anand V. Bhardwaj - Advocate for the respondent.

Reserved on : 22.07.2026

Pronounced on : 04.08.2026

ORDER

The present petition has been filed under Article 226 of the Constitution of India challenging the award dated 19.07.2012 passed by the Member, Board of Revenue, Gwalior, in Appeal No. 1512-PBR/10. By the impugned award, the Board of Revenue set aside the order dated 29.09.2010 passed by the Commissioner, Excise, whereby the respondent was held liable to pay excise duty amounting to Rs. 38,41,409/- on the loss of 20,993.22 proof litres of foreign liquor destroyed in a fire that occurred on 13.06.2007 due to a short circuit. The Commissioner had held that under the provisions of the M.P. Foreign Liquor Rules, 1996, no exemption from payment of duty was available in respect of such loss.

2. The short facts of the case are that the respondent is a licensed manufacturer of foreign liquor carrying on business under the name and style

of M/s Som Distillers. During the audit for the year 2007-08, the Comptroller and Auditor General of India (CAG) inspected the records of the respondent and observed that a fire had broken out in the bottling plant in June 2007 while liquor was being bottled. The fire, allegedly caused by a short circuit, resulted in the destruction of 20,993.22 proof litres of foreign liquor, causing a revenue loss of approximately Rs. 38.41 lakhs. The CAG reported that the respondent was liable to pay excise duty on the quantity of liquor lost, as the M.P. Foreign Liquor Rules, 1996 did not provide any exemption from such liability. Acting upon the audit report, the Commissioner, Excise, by communication dated 15.01.2010, issued a demand to the respondent for payment of excise duty amounting to Rs. 38,41,409/- on the quantity of liquor destroyed in the fire. The respondent submitted a detailed reply disputing both the calculation of the quantity allegedly lost and the consequent demand. It was contended that the calculations made by the CAG were erroneous and that no opportunity of hearing had been afforded before raising the demand. The respondent further explained that the loss had occurred solely due to an accidental fire caused by a short circuit in the bottling plant while the bottles were being filled and that the incident was beyond its control. On this basis, the respondent asserted that no excise duty was leviable on the destroyed liquor and sought reconsideration of the demand. Upon receipt of the respondent's objections, the Commissioner sought a report from the Deputy Excise Commissioner regarding the cause of the fire by letter dated 22.02.2010. After considering the report and the material available on record, the Commissioner concluded that the respondent was liable to pay the duty, holding that the statutory scheme did not permit exemption from payment of duty on liquor lost in such circumstances. Consequently, by order dated 29.09.2010, the Commissioner confirmed the demand for excise duty. Aggrieved by the Commissioner's order, the respondent preferred Appeal No. 1512-PBR/10 before the Board of Revenue under Section 62(2)(c) of the M.P. Excise Act. By its award dated 19.07.2012, the Board of Revenue allowed the appeal and set aside the Commissioner's order. The Board held that the loss of liquor had occurred due to an accidental fire caused by a short circuit and was not attributable to any negligence or deliberate act on the part of the respondent. It further held that such loss fell within the expression "unavoidable causes" and, therefore, no excise duty or penalty was leviable in respect of the quantity destroyed. Being aggrieved by the order of the Board of Revenue, the petitioners have preferred the present writ petition under Article 226 of the Constitution of India seeking quashment of the award dated 19.07.2012 and restoration of the order passed by the Commissioner, Excise.

3. Learned counsel for the petitioner submits that the impugned award dated 19.07.2012 passed by the learned Board of Revenue is contrary to the statutory provisions of the M.P. Excise Act and the M.P. Foreign Liquor Rules, 1996, and suffers from manifest errors of law warranting interference by this Hon'ble Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

4. It is submitted that the respondent has sought to avoid its statutory liability to pay excise duty on the quantity of foreign liquor destroyed in the

fire by invoking Rule 19(2) of the M.P. Foreign Liquor Rules, 1996. Such claim is wholly untenable in law as the respondent has failed to establish the foundational facts necessary for claiming the benefit of the proviso. The Board of Revenue has proceeded on assumptions and equitable considerations instead of applying the settled principles governing fiscal statutes and exemption provisions.

5. It is further submitted that it is a settled principle of law that trade in liquor is res extra commercium and no citizen possesses a fundamental right either to manufacture or to trade in intoxicating liquor. The entire privilege vests exclusively in the State, and every person engaged in such activity does so only by virtue of a statutory licence and subject to strict compliance with the conditions prescribed under the Excise Act and the Rules framed thereunder. The Constitution Bench of the Hon'ble Supreme Court in **Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574**, has categorically held that trade in liquor is not protected under Article 19(1)(g) of the Constitution, that the State enjoys an exclusive privilege over the manufacture and sale of intoxicants, and every licensee must strictly adhere to the statutory conditions governing the licence. Consequently, once the statute creates a liability to pay excise duty, the respondent cannot seek equitable relief contrary to the statutory scheme or claim immunity from payment in the absence of a clear statutory exemption.

6. It is further submitted that excise duty is a fiscal levy and the liability to pay such duty can be avoided only where the statute expressly grants exemption. It is equally well settled that exemption provisions

contained in fiscal statutes are required to be construed strictly. The Constitution Bench of the Hon'ble Supreme Court in **Commissioner of Customs v. Dilip Kumar & Company, (2018) 9 SCC 1,** has authoritatively held that the burden of proving entitlement to an exemption always lies upon the assessee claiming such benefit and that in case of any ambiguity, the interpretation favourable to the Revenue must prevail. Therefore, the respondent bore the statutory burden of proving every ingredient necessary for claiming exemption. The respondent has failed to discharge this burden by producing any cogent or reliable evidence. The entire reasoning adopted by the Board of Revenue proceeds on the erroneous assumption that every accidental fire automatically constitutes an "unavoidable cause" within the meaning of Rule 19(2). Such an interpretation is legally unsustainable. The expression "unavoidable cause" necessarily contemplates an event which could not have been prevented despite the exercise of due diligence, reasonable care and compliance with all statutory and safety requirements. The mere occurrence of a fire does not, by itself, establish that the incident was unavoidable. The respondent was under a legal obligation to prove that all reasonable precautions had been taken to prevent such occurrence.

7. It is further submitted that In the present case, no material whatsoever has been produced by the respondent to establish that regular electrical inspections were conducted, that preventive maintenance of the electrical installations was periodically undertaken, that the bottling plant complied with the prescribed fire safety standards, that electrical safety audits were carried out by competent authorities, or that proper maintenance

registers, inspection reports or expert opinions existed demonstrating the absence of negligence. The respondent has also failed to produce any documentary evidence indicating that the electrical system was regularly inspected or maintained immediately prior to the alleged incident. In the absence of such evidence, the respondent cannot be permitted to merely rely upon the assertion that the fire resulted from a short circuit and thereby seek exemption from payment of statutory duty.

8. It is further submitted that the Board of Revenue has committed a serious error in law by shifting the burden upon the Department to establish negligence on the part of the respondent. Such an approach is directly contrary to the settled principles governing fiscal legislation. The burden never shifted to the Department. It always remained upon the respondent, who sought exemption, to affirmatively establish due diligence, reasonable care and the existence of an unavoidable cause. Unless these foundational facts were proved by satisfactory evidence, the respondent could not claim the benefit of exemption. The writ petition specifically pleads that no evidence regarding routine inspection of the electrical wiring, maintenance of the electrical system or compliance with safety standards was ever produced before the competent authority. Consequently, the fire could not legally be treated as having occurred due to an unavoidable cause.

9. It is further submitted that the order passed by the Commissioner of Excise was a well-reasoned and legally sustainable order passed after considering all relevant material available on record. The Commissioner examined the audit report of the Comptroller and Auditor General of India,

the detailed reply submitted by the respondent, the report furnished by the Deputy Excise Commissioner regarding the cause of the fire, and the relevant provisions of the M.P. Excise Act and the M.P. Foreign Liquor Rules, 1996. Only after due consideration of the statutory provisions and the factual material did the Commissioner conclude that the Rules did not provide exemption from payment of duty in the circumstances of the present case and accordingly confirmed the demand of Rs.38,41,409/-. The findings recorded by the Commissioner were thus based upon relevant evidence and proper application of law and did not warrant interference. The learned Board of Revenue, however, ignored the mandatory legal requirements governing exemption under a fiscal statute. It presumed the existence of an unavoidable cause without any supporting evidence, ignored the settled principle that the burden of proving exemption rests upon the assessee, failed to apply the strict principles governing interpretation of fiscal statutes, granted relief on equitable considerations contrary to statutory provisions, and recorded findings which are unsupported by any legally admissible evidence. Such findings are clearly perverse and legally unsustainable. The Hon'ble Supreme Court in **Novopan India Ltd. v. Collector of Central Excise, 1994 Supp (3) SCC 606**, has consistently held that exemption provisions in taxation statutes must receive strict interpretation and that any ambiguity operates in favour of the Revenue. The said principle squarely applies to the facts of the present case. Since the respondent has failed to establish its entitlement to exemption by clear and cogent evidence, the liability to pay excise duty necessarily continues. It is equally well settled that every quasi-judicial authority is required to record findings based upon evidence and reasons. In **Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496**, the Hon'ble Supreme Court emphasised that quasi-judicial orders must disclose proper reasoning founded upon the material available on record. In the present case, the Board of Revenue has recorded a conclusion that the fire occurred due to an unavoidable cause without any evidence establishing due diligence or absence of negligence. Such findings are based upon conjectures rather than evidence and therefore suffer from perversity warranting interference under Article 226 of the Constitution.

10. It is further submitted that excise duty constitutes an important source of public revenue and every litre of liquor manufactured remains accountable until its lawful clearance in accordance with the provisions of the Excise Act and the Rules. Unless a statutory exemption is affirmatively established by the licensee, liability to pay duty continues. Public revenue cannot be permitted to be defeated merely on the basis of an unsubstantiated assertion that the loss occurred due to an accidental fire. Acceptance of such a proposition would defeat the object of the fiscal statute and create an unwarranted exception unsupported by law. The legal position emerging from the aforesaid authorities is unequivocal. Trade in liquor is a statutory privilege and not a constitutional or fundamental right. Excise laws and the conditions governing licences are required to be strictly enforced. Exemption provisions contained in fiscal statutes must receive strict interpretation. The burden of proving entitlement to exemption always lies upon the person claiming such benefit. Mere occurrence of a fire does not establish that the

loss was caused by an unavoidable cause. Absence of negligence cannot be presumed and must be affirmatively proved by the claimant through cogent evidence. Findings founded upon assumptions, conjectures or equitable considerations, without supporting evidence, are liable to be set aside in exercise of judicial review. Public revenue is entitled to the highest degree of protection under fiscal statutes and statutory liabilities cannot be diluted except in strict conformity with the law. In these circumstances, the impugned award dated 19.07.2012 passed by the Board of Revenue is unsustainable in law and deserves to be quashed. The well-reasoned order dated 29.09.2010 passed by the Commissioner of Excise confirming the demand of excise duty of Rs.38,41,409/- deserves to be restored, and the writ petition merits acceptance.

11. Per contra, learned counsel for the respondent submits that the alleged determination of loss has been carried out unilaterally by the respondent authorities without the presence of any representative of the petitioner. Such unilateral assessment is arbitrary and cannot form the basis for imposition of penalty. There has been no adjudication as to whether any actual loss has been caused to the State exchequer. In absence of any demonstrable loss to the revenue, the imposition of penalty is unjustified and amounts to an arbitrary exaction.

12. It is further submitted that Rule 19 of the M.P. Foreign Liquor Rules, 1996 was substituted by notification dated 29.03.2011. Under the unamended Rule, penalty could extend to three to four times the maximum duty payable, whereas by the substituted Rule the maximum penalty was

substantially reduced and was restricted to an amount not exceeding the duty payable. The proviso relating to unavoidable causes like fire or accident, however, continued to remain substantially unchanged.

13. It is further submitted that the legal effect of the substitution of Rule 19 now stands conclusively settled by the judgment of the Hon'ble Supreme Court in **Pernod Ricard India Private Limited v. State of M.P. & Others, reported in AIR 2024 SC 3143**. The Hon'ble Supreme Court has unequivocally held that proceedings initiated after the substitution of Rule 19 are governed by the substituted Rule and not by the erstwhile provision. The Court observed that the very object of the amendment was to ensure proportionality between the nature of the violation and the penalty imposed. It was further held that the benefit of the substituted Rule operates retroactively thereby extending its application to pending proceedings. Such an interpretation prevents arbitrary classification of similarly situated licensees into two distinct categories without any rational basis or legitimate purpose. The Hon'ble Supreme Court, therefore, held that applying the substituted Rule to pending proceedings promotes fairness, upholds the principle of equality under Article 14 of the Constitution, and gives effect to the legislative intent underlying the amendment.

14. It is further submitted that the reasoning adopted by the petitioners based upon strict interpretation of exemption provisions has no application to the peculiar facts of the present case. The respondent is not seeking any exemption dehors the statute but is claiming the benefit expressly conferred by Rule 19(2). The Board of Revenue merely applied the statutory provision

after recording a finding of fact that the loss had occurred because of an accidental fire and not on account of negligence or diversion.

15. It is lastly submitted that the Commissioner proceeded on the assumption that every loss of liquor necessarily attracts excise duty irrespective of the circumstances under which such loss occurred. Such an interpretation renders the Rule 19(2) otiose and defeats the legislative intent. The Board of Revenue has rightly harmonised the statutory provisions by recognizing that where the loss is occasioned by unavoidable causes like fire, duly established before the competent authority, the statutory discretion available under the proviso deserves to be exercised in favour of the licensee.

16. It is further submitted that the respondent authority has erroneously imposed excise duty by treating the liquor in question as falling within the category of liquor having a declared value exceeding Rs.501/- and up to Rs.1,100/- per case, thereby levying duty at the rate of Rs.240/- per proof litre. It is contended that such levy is contrary to the applicable statutory notification. As per the Gazette Notification dated 16.01.2009, liquor having a declared value up to Rs.500/- per case attracts excise duty at the rate of Rs.180/- per proof litre. Since the liquor involved in the present case falls within the latter category, the imposition of duty at the higher rate of Rs.240/- per proof litre is wholly illegal, arbitrary, and contrary to the provisions of the said notification. Consequently, the impugned demand, being founded upon an erroneous classification and incorrect rate of duty, is liable to be set aside.

17. It is further submitted that the petitioner has repeatedly described

the impugned demand as one relating to excise duty, whereas in substance the proceedings are penal in character. This distinction has been clearly recognized by this Court in ***Gwalior Distillers Limited v. Collector (Excise) & Others***, **2002 (4) MPHT 12,** wherein it was held that although the amount of excise duty may be adopted merely as a measure for quantifying the loss caused to the State, the recovery itself is in the nature of penalty. Once the statutory conditions for imposition of such liability are absent, no recovery can legally be sustained. The Board of Revenue has correctly appreciated this distinction while allowing the respondent's appeal.

18. It is lastly submitted that the impugned proceedings are vitiated by violation of the principles of natural justice. The respondent was neither afforded an effective opportunity to participate in the determination of the alleged quantity of liquor destroyed nor given a meaningful hearing before the liability was fastened. The Commissioner proceeded primarily on the basis of audit observations without conducting an independent adjudication on the disputed questions raised by the respondent. The failure to provide a fair opportunity to contest the factual basis of the demand has caused serious prejudice to the respondent and renders the order legally unsustainable. In these circumstances, the Board of Revenue has correctly appreciated the statutory provisions, properly construed Rule 19(2), recorded findings of fact based upon the material available on record, and granted relief strictly in accordance with law. The petitioner has failed to demonstrate any jurisdictional error, perversity, or manifest illegality warranting interference under Article 226 of the Constitution. The present writ petition, being devoid

of merit, deserves to be dismissed and the impugned award dated 19.07.2012 passed by the Board of Revenue deserves to be affirmed.

19. Heard counsel for the parties and perused the record.

20. From perusal of record, it appears that the Board of Revenue examined the factual matrix and found that the destruction of liquor occurred because of an accidental fire caused by a short circuit and there was no material suggesting any intentional act, diversion or negligence on the part of the respondent. Such finding is essentially one of fact recorded by the final fact-finding authority.

21. The submission advanced on behalf of the petitioners that the respondent failed to produce sufficient documentary evidence regarding electrical inspections and maintenance records does not persuade this Court to interfere with the impugned order. It is true that the burden of establishing entitlement to the benefit of a statutory provision ordinarily lies upon the person claiming such benefit. Equally true, however, is the principle that the burden stands discharged when the claimant places before the authority material reasonably establishing the occurrence of an accidental event falling within the statutory expression employed by the rule.

22. In the present case, the occurrence of the fire itself is not disputed by the Department. The departmental authorities accepted that the fire was caused by a short circuit. No material has been placed on record by the Department suggesting that the fire was deliberately caused, that the respondent had violated any mandatory safety requirement, the electrical system had remained unattended despite known defects, or that the

destruction of liquor resulted from any omission attributable to the respondent. In the absence of any such material, the Board cannot be faulted for treating the incident as one falling within the ambit of "unavoidable causes" contemplated by the proviso.

23. The contention that every accidental fire cannot automatically amount to an unavoidable cause is undoubtedly a correct proposition in law. Nevertheless, every case has to be decided on its own facts. Here, the competent appellate authority has appreciated the entire record and has recorded a finding that the fire resulted from an accidental short circuit and was not attributable to negligence. Such finding cannot be characterized as perverse merely because the petitioners seek a different appreciation of the evidence. Once the appellate authority has recorded a finding that the case falls within the statutory contingency itself, the principles relating to construction of exemption notifications do not justify reopening pure findings of fact in writ jurisdiction.

24. The argument founded upon the decisions in ***Dilip Kumar & Company*** **and** ***Novopan India Ltd. (supra)*** is distinguishable. Those judgments reiterate the principle that exemption provisions are to be strictly construed. There can be no quarrel with the proposition. However, strict interpretation does not authorize the Court to substitute its own appreciation of facts in place of that of the statutory appellate authority.

25. This Court also finds substance in the submission advanced by the respondent that Rule 19 underwent substitution during the pendency of the proceedings and the legal position relating to the substituted provision now

stands explained by the Supreme Court in ***Pernod Ricard India Private Limited v. State of M.P.(supra)*** wherein the Apex Court has emphasized that penalty provisions must be applied in a fair, proportionate, and purposive manner, and beneficial provisions reducing the rigour of penalty are applicable to pending proceedings. The failure to consider this binding precedent further renders the order dated 29.09.2010 legally untenable.

26. The contention regarding erroneous computation of duty and incorrect classification of liquor also raises disputed questions of fact. Since the Board has already set aside the very demand, no useful purpose would be served by entering into those controversies in the present proceedings.

27. The submission regarding violation of principles of natural justice also deserves acceptance to a limited extent. The record indicates that the demand substantially emanated from audit observations and the objections raised by the respondent regarding the quantity destroyed and the applicability of Rule 19(2) were not examined with the depth expected in a quasi-judicial adjudication. The Board of Revenue has considered these aspects while granting relief. No jurisdictional error is demonstrated in such exercise.

28. It is well settled that findings of fact recorded by the final statutory appellate authority are ordinarily immune from interference under Article 226 unless shown to be wholly unsupported by evidence or vitiated by perversity. The petitioners have failed to establish that the conclusions recorded by the Board of Revenue are based on no evidence or are such that no reasonable person could have arrived at them.

29. The impugned order reflects due consideration of the statutory provisions, the factual circumstances surrounding the accidental fire and the scope of Rule 19(2). The conclusions reached by the Board are neither arbitrary nor contrary to law. This Court, while exercising supervisory jurisdiction, cannot re-appreciate evidence as an appellate court merely because another view is possible.

30. For all the aforesaid reasons, this Court is of the considered opinion that the petitioners have failed to make out any case warranting interference under Article 226 of the Constitution of India. The impugned order dated 19.07.2012 passed by the Board of Revenue does not suffer from any jurisdictional error, perversity or manifest illegality.

31. Accordingly, the writ petition fails and is hereby **dismissed.**

(MILIND RAMESH PHADKE)
JUDGE

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